

Consolidated Stakeholder Comments – Solid Waste Activities at Rail Yards Proposal:

(C) = County Solid Waste Entities

(RR) = Rail Related Entities

(TS) = Transfer Station Owner/Operators

Court Related Issues:

- ♦ What will happen to exempt facilities should the courts eventually take away the pre-emption? Could the Department convert these exemptions to a permit-by-rule? (RR)
- ♦ Did the State consider fighting the pre-emption? (TS)

State Regulatory Authority Issues:

- ♦ The Department does not have the authority to revoke the “pre-emption” for exempt facilities which are out of compliance. (RR)
- ♦ The Department needs to look at each operational requirement and determine if it is pre-empted from requiring rail carrier to comply with same. (RR)
- ♦ Has the Department sought a formal opinion from the Surface Transportation Board regarding the extent of pre-emption? (TS)

Exemption Eligibility Issues: Just who is exempt? What activities are exempt? Why are they exempt?

- ♦ Are private operators using rail spurs or rail property exempt. What about joint ventures between legitimate rail carriers and other entities? (C) What about leased property? (RR) (TS)
- ♦ The rail carrier exemption should recognize that rail carriers perform activities through other entities, for example, contractors, corporate affiliates, agents. These other entities should be included in the exemption. These “other entities” should fully document their association with the rail carrier, such as being a licensee. (RR)
- ♦ A lease agreement may not be enough to qualify an entity under the exemption. The Department needs to look at the function/service the entity is providing and how it relates to the rail carrier. (RR)
- ♦ Transloading of sealed containers should be completely exempt – no recordkeeping requirements or operational standards, only a notice to the Department as to the location of the operation.
- ♦ The Department should consider narrowing the scope of the exemption to only transfers from truck to rail without any sorting or tipping process (& some incidental compaction) with reduced operational requirements. (RR)
- ♦ Rather than narrow the exemptions, the Department should expand them to allow easier access to railroads. (RR)
- ♦ The Department should develop an exemption for the loading of recyclable materials onto rail. (RR)

- ♦ What was the purpose of exempting rail carriers from transfer station requirements?

County Planning/Waste Flow Issues:

- ♦ Would traditional traffic routes to a rail carrier solid waste facility that previously were included in a county plan still be subject to county planning? (C)
- ♦ Waste which is imported from other counties and processed by the rail carrier should not be eligible for in-county waste flow provisions. (C)
- ♦ How will the Department handle residue generated from MRF operations? Would the residue be considered to be generated in the county in which the facility resides? (C)
- ♦ Flow control is a big impediment and a barrier to more economical solid waste services. It prevents railroads from taking advantage of opportunities. Moreover, railroads have both a right and obligation to take the waste. (RR)
- ♦ Can the Department assess a penalty for violating waste flow control? Are actions taken for violating flow controls taken against the hauler or the transfer station facility? (TS)
- ♦ Who enters into an agreement with a rail facility if the material is generated in a waste-flow county? (TS)
- ♦ The proposal should prohibit solid waste facilities at rail yards from becoming generators of waste. (C)

Operational & Design Issues for exempt RR facilities:

- ♦ The open air transfer of asbestos should be prohibited. Additionally, the Department needs to consider what air pollution controls are needed to address asbestos. (C)
- ♦ Rail carriers should be required to submit detailed descriptions of their ICF/TS/MRF activities. (C)
- ♦ The criteria should address how unauthorized waste (for e.g., haz. Waste) should be handled. (C)
- ♦ Will the Department consider tailoring the operational controls to a specific operation? (RR)
- ♦ The Department should develop different standards for C&D waste operations. (RR)
- ♦ Are all of the “new” environmental requirements for exempt facilities the same as those that currently exist for transfer stations? (RR)
- ♦ Why are storage/holding times different for rail carriers than for transfer stations. Do containers have to be sealed? (TS)
- ♦ There are many regulatory requirements with which rail carriers don’t have to comply. There needs to be a level playing field for transporters to stay competitive. (TS)
- ♦ There are open air construction and demolition operations now that do not present a problem. Moreover, there are already provisions to address air emissions, litter, etc. at rail carrier operations. Why, therefore, does the Department require that tipping activities be done in an enclosed building? (RR)
- ♦ Do facilities have unlimited capacity? Has the Department considered capacity?

Notification/Recordkeeping Issues: What, how much & who should supply it

- ♦ The Department should be able to use RR billing information for recordkeeping purposes. (RR)
- ♦ More detail in the proposal is needed w/r/t recordkeeping requirements. (RR)
- ♦ Transporters should supply the data the Department needs, since they are not exempt. (RR)
- ♦ The Department should look to the hazardous materials regulations w/r/t recordkeeping. (RR)
- ♦ What are the recordkeeping requirements for out-of-state waste when it must stop in New Jersey to get transloaded and then move back out-of-state? (RR)
- ♦ Will rail carriers give notice that they are in business? If so, how is this done? Will the Department give an acknowledgement letter back to the rail carrier in lieu of giving them a permit as would be done in the case of a transfer station? (TS)

Definitional Issues:

- ♦ The definition of transfer activities is not clear. What about direct transloading activities (e.g. tipping directly into rail cars) – is that a transfer station activity? (RR)
- ♦ There is disagreement w/r/t the terms used, e.g., transloading, transfer activities, processing v. sorting, etc. Processing is essentially part of the sorting process (RR)
- ♦ Who determines whether or not an entity is a “rail carrier?” The Department needs to be more specific with respect to what qualifies an entity as a rail carrier. (TS)

Local Authority Issues:

- ♦ Local authorities have tried to exert authority over rail carrier solid waste activities. The proposal should make it clear that they do not have any authority. (RR)
- ♦ Will rail carriers need local approval or need to meet local building codes for the buildings in which transfer activities will take place? (C)

Enforcement Issues:

- ♦ The proposal should clarify that CEHA agencies or other authorized local enforcement personnel have the authority to enter and inspect these exempt railroad activities. (C)
- ♦ Can the Department assess a penalty for violating waste flow control? Are actions taken for violating flow controls taken against the hauler or the collection facility? (TS)
- ♦ Can the Department issue retroactive penalties? (TS)
- ♦ Will enforcement be checking a rail carrier’s origin and destination forms? Can the Department inspect a rail carrier facility? (TS)
- ♦ Can a rail carrier that feels it has a strong case, build and operate within the next month? If this were to happen, would the Department have the burden of proof to enforce against the rail carrier? Could it stop its operation?. Meanwhile, this rail carrier could assume more and more business from transfer stations. (TS)
- ♦ Can the Department fine out-of-state transfer facilities for accepting waste which should not have gone to the out-of-state facility? (TS)

Fee Related Issues:

- ♦ Rail related solid waste facilities should at least be charged enforcement fee. (C)
- ♦ The Department should be able to require a permit based on health, safety, and environmental concerns. If the Department can impose fines and penalties for violations, why can't they impose fees on these rail related solid waste activities? (TS)

A901 Issues:

- ♦ Has the Department thought about A901 and decals? Is the Department considering exempting rail carrier facilities from A901? The proposal needs to clarify how A901 applies. (RR)

Host Community Benefits:

- ♦ Do host community benefits apply to exempt facilities? (RR)(TS)

Other Regulatory Issues:

- ♦ How will the Department address air and water requirements? Will there be a similar pre-emption? What about the hazardous waste regulations? (C)
- ♦ Is low level radioactive waste, Superfund waste or TSCA waste covered by this proposal, for example, soil contaminated with PCBs? (RR)
- ♦ Will rail carriers need to get air pollution permits? (TS)

Economic Impact Issues:

- ♦ This proposal has the ability to undercut transfer stations since "outlaw" facilities run by rail carriers will charge less to handle waste. There should be an economic analysis of the effect of this rule on transfer stations. Will the Department be looking at the economic impact of different requirements for similar facilities? (TS)
- ♦ The proposal favors rail carriers over transfer stations. The proposal is incorrect that there will be an overall positive impact if transfer stations lose business and have to lay off people. Will there be ways to keep transfer stations competitive? (TS)

Policy Issues:

- ♦ The Department should consider the State's transportation policies and steer solid waste to rail to relieve traffic congestion. (RR)
- ♦ The Department should provide an incentive to move recyclables by rail. (RR)

Miscellaneous Matters:

- ♦ There should be uniform standards across the US regarding exempt rail carrier solid waste facilities. New Jersey should work with other states and at the congressional level first, otherwise it will just play out in the courts. (RR) Have other states passed similar rules? (TS)
- ♦ Does the proposal refer to certified or computerized scales? (TS)
- ♦ Has the Department considered the reaction in the towns that will host these rail carrier transfer facilities? (TS)

- ♦ Can the Department send a notice of the rule proposal to all group participants? (TS)
- ♦ It appears as if the Department won't have control over the number of these types of rail related solid waste facilities. (TS)
- ♦ Is there any limit on the number of transporter stickers? (TS)